



## Senate

General Assembly

**File No. 456**

February Session, 2002

Substitute Senate Bill No. 427

*Senate, April 11, 2002*

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

### **AN ACT CONCERNING BOATING SAFETY.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 15-133 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2002*):

3 (a) The rules prescribed by this section shall apply on all state and  
4 federal waters.

5 (b) No person shall use a vessel in a manner [which] that  
6 unreasonably or unnecessarily interferes with free and proper  
7 navigation. Anchoring under a bridge, in a narrow channel or in a  
8 congested water not designated as an anchorage area [shall be deemed  
9 to be] is such interference, except in case of emergency.

10 (c) No person shall alter, deface or remove any capacity information  
11 label affixed to any vessel.

12 (d) No person shall operate a vessel or engage in water skiing:

13 [while under the influence of intoxicating liquor or any drug, or both.  
14 For the purposes of this subsection and sections 15-140l or 15-140n, a  
15 person shall be considered to be under the influence of intoxicating  
16 liquor if the ratio of alcohol in the blood of such person at the time of  
17 the alleged offense, as determined by methods prescribed in  
18 subsection (a) of section 15-140r, is ten-hundredths of one per cent or  
19 more of alcohol, by weight. No person arrested for a violation of this  
20 subsection shall operate a vessel or engage in water-skiing upon the  
21 waters of this state for a twenty-four-hour period after such arrest] (1)  
22 While under the influence of intoxicating liquor or any drug, or both,  
23 or (2) while such person has an elevated blood alcohol content. For the  
24 purposes of this section and sections 15-140l and 15-140n, as amended  
25 by this act, "elevated blood alcohol content" means: (A) A ratio of  
26 alcohol in the blood of such person that is ten-hundredths of one per  
27 cent or more of alcohol, by weight, (B) if such person has been  
28 convicted of a violation of this subsection, a ratio of alcohol in the  
29 blood of such person that is seven-hundredths of one per cent or more  
30 of alcohol, by weight, or (C) if such person is under twenty-one years  
31 of age, a ratio of alcohol in the blood of such person that is two-  
32 hundredths of one per cent or more of alcohol, by weight. For  
33 purposes of this section and sections 15-140l, 15-140n, 15-140o and 15-  
34 140q, as amended by this act, "operate" means that the vessel is  
35 underway or aground and not moored, anchored or docked.

36 (e) In any prosecution for a violation of subdivision (1) of subsection  
37 (d) of this section, evidence concerning the amount of alcohol in the  
38 defendant's blood or urine at the time of the alleged offense, as shown  
39 by a chemical analysis of the defendant's blood, breath or urine,  
40 otherwise admissible under subsection (a) of section 15-140r, shall be  
41 admissible only at the request of the defendant.

42 [(e)] (f) No person shall operate a vessel or engage in any activity  
43 contrary to the regulations [of] adopted by the commissioner.

44 [(f)] (g) No person shall moor a vessel to, obstruct, remove, damage  
45 or destroy any navigation aid or any device used to mark a restricted

46 area.

47       ~~[(g)]~~ (h) Any person who violates the provisions of subsection (d) of  
48 this section shall: ~~[be fined not less than one hundred dollars nor more~~  
49 ~~than five hundred dollars. Any person who violates any of the~~  
50 ~~provisions of subsection (b), (c) or (f) of this section shall be fined not~~  
51 ~~less than twenty-five dollars nor more than two hundred dollars]~~ (1)  
52 For conviction of a first violation, (A) be fined not less than five  
53 hundred dollars nor more than one thousand dollars, and (B) be (i)  
54 imprisoned not more than six months, forty-eight consecutive hours of  
55 which may not be suspended or reduced in any manner, or (ii)  
56 imprisoned not more than six months, with the execution of such  
57 sentence of imprisonment suspended entirely and a period of  
58 probation imposed requiring as a condition of such probation that  
59 such person perform one hundred hours of community service, as  
60 defined in section 14-227e, and (C) have such person's safe boating  
61 certificate or certificate of personal watercraft operation, if any,  
62 suspended for one year; (2) for conviction of a second violation not  
63 later than ten years after a prior conviction for the same offense, (A) be  
64 fined not less than one thousand dollars nor more than four thousand  
65 dollars, (B) be imprisoned not more than two years, one hundred  
66 twenty consecutive days of which may not be suspended or reduced in  
67 any manner, and sentenced to a period of probation requiring as a  
68 condition of such probation that such person perform one hundred  
69 hours of community service, as defined in section 14-227e, and (C)  
70 have such person's safe boating certificate or certificate of personal  
71 watercraft operation, if any, suspended for three years or until the date  
72 of such person's twenty-first birthday, whichever is longer; and (3) for  
73 conviction of a third and subsequent violation not later than ten years  
74 after a prior conviction for the same offense, (A) be fined not less than  
75 two thousand dollars nor more than eight thousand dollars, (B) be  
76 imprisoned not more than three years, one year of which may not be  
77 suspended or reduced in any manner, and sentenced to a period of  
78 probation requiring as a condition of such probation that such person  
79 perform one hundred hours of community service, as defined in  
80 section 14-227e, and (C) have such person's safe boating certificate or

81 certificate of personal watercraft operation, if any, permanently  
82 revoked upon such third offense. Any person who violates the  
83 provisions of subsection (c), (f) or (g) of this section shall be fined not  
84 less than one hundred dollars and not more than five hundred dollars.  
85 Any person who violates any of the provisions of the provisions of  
86 subsection [(e)] (f) of this section shall have committed an infraction.

87 (i) The suspension of a safe boating certificate or certificate of  
88 personal watercraft operation imposed under subsection (h) of this  
89 section shall take effect immediately upon expiration of any period in  
90 which an appeal of any conviction under subsection (d) of this section  
91 may be taken, provided if an appeal is taken, the suspension shall be  
92 stayed during the pendency of such appeal. If the suspension takes  
93 effect, the defendant shall return, not later than the second business  
94 day after the suspension takes effect, by personal delivery or first class  
95 mail, the safe boating certificate or certificate of personal watercraft  
96 operation issued to the defendant.

97 (j) Any person who violates the provisions of subsection (b) of this  
98 section shall be fined not more than two hundred dollars.

99 (k) (1) A record shall be kept by the Superior Court of any  
100 conviction relating to the operation of a vessel. A summary of such  
101 record, with a statement of the number of the operator's safe boating  
102 certificate or certificate of personal watercraft operation shall, not later  
103 than five days after such conviction, forfeiture or any other disposition  
104 or nolle, be transmitted to the commissioner by such court. Each court  
105 shall report each conviction under subsection (d) of this section to the  
106 commissioner. The commissioner shall suspend the safe boating  
107 certificate or certificate of personal watercraft operation of the person  
108 reported as convicted for the period of time required by subsection (h)  
109 of this section.

110 (2) The safe boating certificate or certificate of personal watercraft  
111 operation of a person found guilty under subsection (d) of this section  
112 who is under eighteen years of age shall be suspended by the  
113 commissioner for the period of time set forth in subsection (h) of this

114 section, or until such person attains the age of eighteen years,  
115 whichever period is longer.

116 Sec. 2. Section 15-140l of the general statutes is repealed and the  
117 following is substituted in lieu thereof (*Effective October 1, 2002*):

118 (a) A person commits the offense of reckless operation of a vessel in  
119 the first degree while under the influence when, while under the  
120 influence of intoxicating liquor or any drug, or both, [he] or while such  
121 person has an elevated blood alcohol level content, such person  
122 operates a vessel at such speed or maneuvers a vessel in such a manner  
123 as to result in (1) death or serious physical injury to another person, or  
124 (2) damage to property in excess of [one] five thousand dollars.

125 (b) Any person guilty of reckless operation of a vessel in the first  
126 degree while under the influence shall be fined not less than two  
127 thousand five hundred dollars nor more than [one] five thousand  
128 dollars or imprisoned not more than one year, or both.

129 Sec. 3. Section 15-140n of the general statutes is repealed and the  
130 following is substituted in lieu thereof (*Effective October 1, 2002*):

131 (a) A person commits the offense of reckless operation of a vessel in  
132 the second degree while under the influence when, while under the  
133 influence of intoxicating liquor or any drug, or both, [he] or while such  
134 person has an elevated blood alcohol level content, such person  
135 operates a vessel at such speed or maneuvers a vessel in such a manner  
136 as to endanger the life, limb or property of another person.

137 (b) Any person guilty of reckless operation of a vessel in the second  
138 degree while under the influence shall be fined not less than [two  
139 hundred fifty] five hundred dollars nor more than [five hundred] one  
140 thousand dollars or imprisoned not more than six months, or both.

141 Sec. 4. Section 15-140o of the general statutes is repealed and the  
142 following is substituted in lieu thereof (*Effective October 1, 2002*):

143 (a) Any peace officer authorized to enforce the provisions of

144 sections 15-129, 15-133, as amended by this act, 15-133b, 15-133c, 15-  
145 140e, as amended by this act, to 15-140u, inclusive, 15-154 and 15-156  
146 who arrests an operator for a violation of subsection (d) of section 15-  
147 133, as amended by this act, or section 15-140k, 15-140l, as amended by  
148 this act, 15-140m or 15-140n, as amended by this act, may take the  
149 vessel operated in such violation into [his] such peace officer's custody  
150 and shall cause the same to be taken to and stored in a suitable place.  
151 There shall be no liability attached to such officer for any damages to  
152 such vessel while in [his] such peace officer's custody. All charges  
153 necessarily incurred by such peace officer in the performance of such  
154 duty shall be a lien upon such vessel. The owner or keeper of any  
155 marina or other place where such vessel is stored shall have a lien  
156 upon the same for [his] the storage charges and if such vessel has been  
157 stored for a period of not less than sixty days, such owner or keeper  
158 may sell the same for storage charges owed thereon, provided a notice  
159 of intent to sell shall be sent to the Commissioner of Environmental  
160 Protection, the Commissioner of Motor Vehicles, and the owner of  
161 such vessel, if known, five days before the sale of such vessel. If the  
162 owner is unknown, such sale shall be advertised by such marina  
163 owner or keeper in a newspaper published or having a circulation in  
164 the town where such marina or other place is located three times,  
165 commencing at least five days before the sale. The proceeds of such  
166 sale, after deducting the amount due such marina owner or keeper and  
167 all expenses of the peace officer who placed such vessel in storage,  
168 shall be paid to the owner of such vessel or [his] such owner's legal  
169 representatives, if claimed by [him] such owner or them at any time  
170 within one year from the date of such sale. If such balance is not  
171 claimed within said period, it shall escheat to the state.

172 (b) Any vessel [being] that is operated by a person who is arrested  
173 for a violation of section 15-140n, [shall] as amended by this act, in  
174 connection with such operation, or for a violation of section 15-140l, as  
175 amended by this act, after being involved in a boating accident, may be  
176 impounded for [twenty-four] a minimum of forty-eight hours after the  
177 arrest. Any vessel involved in a boating accident that results in death,  
178 serious physical injury, a missing person or property damage in excess

179 of five thousand dollars may be seized for the collection of evidence  
180 and held until the investigation of the boating accident or any related  
181 court proceedings are concluded. The trailer utilized by the operator to  
182 transport the vessel may also be impounded to facilitate transport and  
183 handling of the vessel.

184 Sec. 5. Section 15-140q of the general statutes is repealed and the  
185 following is substituted in lieu thereof (*Effective October 1, 2002*):

186 (a) Any person who operates a vessel or engages in water skiing in  
187 this state shall be deemed to have consented to a chemical analysis of  
188 such person's blood, breath or urine, and if such person is a minor,  
189 such person's parent or parents or guardian shall also be deemed to  
190 have given their consent for such an analysis of the minor's blood,  
191 breath or urine.

192 [(a)] (b) If any such person, having been placed under arrest for: (1)  
193 [violating] Violating subsection (b) of section 53-206d; [, or for] (2)  
194 operating a vessel upon the waters of this state while under the  
195 influence of intoxicating liquor or any drug, or both; (3) water skiing  
196 upon the waters of this state while under the influence of intoxicating  
197 liquor or any drug, or both; (4) operating a vessel upon the waters of  
198 this state or water skiing upon the waters of this state while such  
199 person has an elevated blood alcohol content, and thereafter, after  
200 being apprised of [his] such person's constitutional rights, having been  
201 requested to submit to a blood, breath or urine test at the option of the  
202 police officer, having been afforded a reasonable opportunity to  
203 telephone an attorney prior to the performance of such test and having  
204 been informed that such person's safe boating certificate or certificate  
205 of personal watercraft operation issued by the commissioner as a  
206 condition of operating a vessel shall be suspended in accordance with  
207 the provisions of this section if such person refuses to submit to such  
208 test or if such person submits to such test and the results of such test  
209 indicate that such person has an elevated blood alcohol content and  
210 that evidence of any such refusal shall be admissible in accordance  
211 with subsection (d) of section 15-140r, as amended by this act, and may

212 be used against [him] such person in any criminal prosecution, refuses  
213 to submit to the designated test, the test shall not be given; provided, if  
214 [the] such person refuses or is unable to submit to a blood test, the  
215 [police] peace officer shall designate the breath or urine test as the test  
216 to be taken. The peace officer shall make a notation upon the records of  
217 the police department that such officer informed such person that such  
218 person's safe boating certificate or certificate of personal watercraft  
219 operation would be suspended if such person refused to submit to  
220 such test or if such person submitted to such test and the results of  
221 such test indicated that such person has an elevated blood alcohol  
222 content.

223 [(b) The provisions of this section shall not apply to any person  
224 whose physical condition is such that, according to competent medical  
225 advice, such test would be inadvisable.

226 (c) The state shall pay the reasonable charges of any physician who,  
227 at the request of a municipal police department, takes a blood sample  
228 for purposes of a test under this section.]

229 (c) If the person arrested refuses to submit to such test or analysis,  
230 or submits to such test or analysis commenced within two hours of the  
231 time of operation, and the results of such test or analysis indicate that  
232 at the time of the alleged offense such person had an elevated blood  
233 alcohol content, the peace officer shall immediately revoke the safe  
234 boating certificate or certificate of personal watercraft operation, if any,  
235 of such person for a twenty-four-hour period and shall issue a  
236 temporary operating privilege form to such person valid for the period  
237 commencing twenty-four hours after issuance and ending thirty-five  
238 days after the date such person received notice of such person's arrest  
239 by the peace officer. The peace officer shall prepare a written report of  
240 the incident and shall mail the report together with a copy of the  
241 completed temporary operating privilege form, any certificate taken  
242 into possession and a copy of the results of any chemical test or  
243 analysis, to the Department of Environmental Protection within three  
244 business days. The report shall be made on a form approved by the



245 commissioner and shall be subscribed and sworn to under penalty of  
246 false statement as provided in section 53a-157b by the peace officer  
247 before whom such refusal was made or who administered or caused to  
248 be administered such test or analysis. If the person arrested refused to  
249 submit to such test or analysis, the report shall be endorsed by a third  
250 person who witnessed such refusal. The report shall set forth the  
251 grounds for the officer's belief that there was probable cause to arrest  
252 such person for operating such vessel or engaging in water skiing  
253 while under the influence of intoxicating liquor or any drug, or both,  
254 or while such person has an elevated blood alcohol content and shall  
255 state that such person refused to submit to such test or analysis when  
256 requested by such peace officer or that such person submitted to such  
257 test or analysis, commenced within two hours of the time of operation,  
258 and the results of such test or analysis indicated that such person at the  
259 time of the alleged offense had an elevated blood alcohol content.

260 (d) If the person arrested submits to a blood or urine test at the  
261 request of the peace officer, and the specimen requires laboratory  
262 analysis in order to obtain the test results, and if the test results  
263 indicate that such person has an elevated blood alcohol content, the  
264 peace officer, immediately upon receipt of the test results, shall notify  
265 and submit to the commissioner the written report required pursuant  
266 to subsection (c) of this section.

267 (e) Upon receipt of such report, the commissioner shall suspend the  
268 safe boating certificate or certificate of personal watercraft operation of  
269 such person effective as of a date certain, such date shall be no later  
270 than thirty-five days after the date such person received notice of such  
271 person's arrest by the peace officer. Any person whose safe boating  
272 certificate or certificate of personal watercraft operation is suspended  
273 in accordance with this subsection shall be entitled to a hearing before  
274 the commissioner to be held prior to the effective date of the  
275 suspension. The commissioner shall send a suspension notice to such  
276 person informing such person that such person's safe boating  
277 certificate or certificate of personal watercraft operation is suspended  
278 and shall specify the date of such suspension and that such person is

279 entitled to a hearing prior to the effective date of the suspension and  
280 may schedule such hearing by contacting the Department of  
281 Environmental Protection not later than seven days after the date of  
282 mailing of such suspension notice.

283 (f) If such person does not contact the department to schedule a  
284 hearing, the commissioner shall affirm the suspension contained in the  
285 suspension notice for the appropriate period specified in subsection (i)  
286 of this section.

287 (g) If such person contacts the department to schedule a hearing, the  
288 department shall assign a date, time and place for the hearing, which  
289 date shall be prior to the effective date of the suspension. At the  
290 request of such person or hearing officer and upon a showing of good  
291 cause, the commissioner may grant one continuance for a period not to  
292 exceed thirty days. If a continuance is granted, the commissioner shall  
293 extend the validity of the temporary operating privilege issued  
294 pursuant to subsection (b) of this section for a period not to exceed the  
295 period of such continuance. The hearing shall be limited to a  
296 determination of the following issues: (1) Whether the peace officer  
297 had probable cause to arrest the person for operating the vessel or  
298 engaging in water skiing while under the influence of intoxicating  
299 liquor or drugs, or both, or while such person has an elevated blood  
300 alcohol content; (2) whether such person was placed under arrest; (3)  
301 whether such person (A) refused to submit to such test or analysis, or  
302 (B) submitted to such test or analysis, commenced within two hours of  
303 the time of operation, and the results of such test or analysis indicated  
304 that at the time of the alleged offense that such person had an elevated  
305 blood alcohol content; and (4) whether such person was operating the  
306 vessel or engaging in water skiing. At the hearing, the results of the  
307 test or analysis shall be sufficient to indicate the ratio of alcohol in the  
308 blood of such person at the time of operation, except that if the results  
309 of an additional test, administered pursuant to section 15-140r, as  
310 amended by this act, indicate that the ratio of alcohol in the blood of  
311 such person is twelve-hundredths of one per cent or less of alcohol, by  
312 weight, and is higher than the results of the first test, evidence shall be

313 presented that demonstrates that the test results and analysis thereof  
314 accurately indicate the blood alcohol content at the time of operation.  
315 The fees of any witness summoned to appear at the hearing shall be  
316 the same as provided in section 52-260.

317 (h) If, after such hearing, the commissioner finds on any one of said  
318 issues in the negative, the commissioner shall reinstate such safe  
319 boating certificate or certificate of personal watercraft operation. If,  
320 after such hearing, the commissioner does not find on any one of said  
321 issues in the negative or if such person fails to appear at such hearing,  
322 the commissioner shall affirm the suspension contained in the  
323 suspension notice for the appropriate period specified in subsection (i)  
324 of this section. The commissioner shall render a decision at the  
325 conclusion of such hearing or send a notice of the decision by certified  
326 mail to such person not later than thirty-five days from the date of  
327 notice of such person's arrest by the peace officer or, if a continuance is  
328 granted, not later than sixty-five days from the date such person  
329 received notice of such person's arrest by the peace officer. The notice  
330 of such decision sent by certified mail to the address of such person as  
331 shown by the records of the commissioner shall be sufficient notice to  
332 such person that such person's safe boating certificate or certificate of  
333 personal watercraft operation is reinstated or suspended. Unless a  
334 continuance of the hearing is granted pursuant to subsection (g) of this  
335 section, if the commissioner fails to render a decision within thirty-five  
336 days from the date that such person received notice of such person's  
337 arrest by the peace officer, the commissioner shall reinstate such  
338 person's safe boating certificate or certificate of personal watercraft  
339 operation.

340 (i) The commissioner shall suspend the operator's safe boating  
341 certificate or certificate of personal watercraft operation, and revoke  
342 the temporary operating privilege issued pursuant to subsection (c) of  
343 this section, of a person who does not contact the department to  
344 schedule a hearing under subsection (e) of this section, who fails to  
345 appear at such hearing, or against whom, after a hearing, the  
346 commissioner holds pursuant to subsection (g) of this section. Such

347 suspension shall be as of the effective date contained in the suspension  
348 notice or the date the commissioner renders a decision, whichever is  
349 later, for a period of: (1) (A) Except as provided in subparagraph (B) of  
350 this subdivision, ninety days if such person submitted to a test or  
351 analysis and the results of such test or analysis indicated that at the  
352 time of the alleged offense that such person had an elevated blood  
353 alcohol content, or (B) one hundred twenty days if such person  
354 submitted to a test or analysis and the results of such test or analysis  
355 indicated that the ratio of alcohol in the blood of such person was  
356 sixteen-hundredths of one per cent or more of alcohol, by weight, or  
357 (C) six months if such person refused to submit to such test or analysis;  
358 (2) if such person has previously had such person's safe boating  
359 certificate or certificate of personal watercraft operation suspended  
360 under this section, (A) except as provided in subparagraph (B) of this  
361 subdivision, nine months if such person submitted to a test or analysis  
362 and the results of such test or analysis indicated that at the time of the  
363 alleged offense that such person had an elevated blood alcohol content,  
364 (B) ten months if such person submitted to a test or analysis and the  
365 results of such test or analysis indicated that the ratio of alcohol in the  
366 blood of such person was sixteen-hundredths of one per cent or more  
367 of alcohol, by weight, and (C) one year if such person refused to  
368 submit to such test or analysis; and (3) if such person has two or more  
369 times previously had such person's safe boating certificate or certificate  
370 of personal watercraft operation suspended under this section, (A)  
371 except as provided in subparagraph (B) of this subdivision, two years  
372 if such person submitted to a test or analysis and the results of such  
373 test or analysis indicated that at the time of the alleged offense that  
374 such person had an elevated blood alcohol content, (B) two and one-  
375 half years if such person submitted to a test or analysis and the results  
376 of such test or analysis indicated that the ratio of alcohol in the blood  
377 of such person was sixteen-hundredths of one per cent or more of  
378 alcohol, by weight, and (C) three years if such person refused to  
379 submit to such test or analysis.

380 (j) Notwithstanding the provisions of subsections (b) to (i),  
381 inclusive, of this section, any peace officer who obtains the results of a

382 chemical analysis of a blood sample taken from an operator of a vessel  
383 involved in an accident who suffered or allegedly suffered physical  
384 injury in such accident shall notify the commissioner and submit to the  
385 commissioner a written report if such results indicate that at the time  
386 of the alleged offense such person had an elevated blood alcohol  
387 content, and if such person was arrested for a violation of subsection  
388 (d) of section 15-133, as amended by this act, and sections 15-140l, as  
389 amended by this act, and 15-140n, as amended by this act, in  
390 connection with such accident. The report shall be made on a form  
391 approved by the commissioner containing such information as the  
392 commissioner prescribes and shall be subscribed and sworn under  
393 penalty of false statement, as provided in section 53a-157b, by the  
394 peace officer. The commissioner shall, after notice and an opportunity  
395 for hearing, which shall be conducted in accordance with chapter 54,  
396 suspend the safe boating certificate or certificate of personal watercraft  
397 operation of such person for a period of up to ninety days, or, if such  
398 person has previously had such person's operating privilege  
399 suspended under this section, for a period up to one year. Each  
400 hearing conducted under this section shall be limited to a  
401 determination of the following issues: (1) Whether the peace officer  
402 had probable cause to arrest the person for operating a vessel or  
403 engaging in water skiing while under the influence of intoxicating  
404 liquor or drugs, or both, or while such person has an elevated blood  
405 alcohol content; (2) whether such person was placed under arrest; (3)  
406 whether such person was operating the vessel or engaged in water  
407 skiing; (4) whether the results of the analysis of the blood of such  
408 person indicate that such person had an elevated blood alcohol  
409 content; and (5) whether the blood sample was obtained in accordance  
410 with conditions for admissibility as set forth in subsection (b) of  
411 section 15-140r, as amended by this act. If, after such hearing, the  
412 commissioner finds on any issue in the negative, the commissioner  
413 shall not impose a suspension. The fees of any witness summoned to  
414 appear at the hearing shall be the same as provided by the general  
415 statutes for witnesses in criminal cases.

416 (k) The provisions of this section shall apply with the same effect to

417 the refusal by any person to submit to an additional chemical test as  
418 provided in subdivision (5) of subsection (a) of section 15-140r, as  
419 amended by this act.

420 (l) The provisions of this section do not apply to any person whose  
421 physical condition is such that, according to competent medical advice,  
422 such test would be inadvisable.

423 (m) The state shall pay the reasonable charges of any physician who,  
424 at the request of a municipal police department, takes a blood sample  
425 for purposes of a test under the provisions of this section.

426 (n) For the purposes of this section, "elevated blood alcohol content"  
427 means: (1) A ratio of alcohol in the blood of such person that is ten-  
428 hundredths of one per cent or more of alcohol, by weight, (2) if such  
429 person has been convicted of a violation of subsection (e) of section 15-  
430 133, as amended by this act, a ratio of alcohol in the blood of such  
431 person that is seven-hundredths of one per cent or more of alcohol, by  
432 weight, or (3) if such person is under twenty-one years of age, a ratio  
433 of alcohol in the blood of such person that is two-hundredths of one  
434 per cent or more of alcohol, by weight.

435 (o) The commissioner may adopt regulations, in accordance with  
436 chapter 54, to implement the provisions of this section.

437 Sec. 6. Section 15-140r of the general statutes is repealed and the  
438 following is substituted in lieu thereof (*Effective October 1, 2002*):

439 [(a) In any criminal prosecution for violation of section 15-140l or  
440 15-140n, subsection (a) of section 15-133 or]

441 (a) Except as provided in subsection (d) of this section, in any  
442 criminal prosecution for the violation of: (1) Subsection (d) of section  
443 15-133, as amended by this act; (2) sections 15-140l and 15-140n, as  
444 amended by this act; and (3) subsection (b) of section 53-206d, evidence  
445 respecting the amount of alcohol or drug in the defendant's blood or  
446 urine at the time of the alleged offense, as shown by a chemical  
447 analysis of the defendant's breath, blood or urine shall be admissible

448 and competent provided: [(1)] (A) The defendant was afforded a  
449 reasonable opportunity to telephone an attorney prior to the  
450 performance of the test and consented to the taking of the test upon  
451 which such analysis is made; [(2)] (B) a true copy of the report of the  
452 test result was mailed to or personally delivered to the defendant  
453 within twenty-four hours or by the end of the next regular business  
454 day, after such result was known, whichever is later; [(3)] (C) the test  
455 was performed by or at the direction of [a] an authorized law  
456 enforcement officer according to methods and with equipment  
457 approved by the Department of Public Health and was performed [by  
458 a person certified or recertified for such purpose by said department or  
459 recertified by persons certified as instructors by the Commissioner of  
460 Public Health. If a blood test is taken, it shall be on a blood sample  
461 taken by a person licensed to practice medicine and surgery in this  
462 state, a qualified laboratory technician, an emergency medical  
463 technician II or a registered nurse; (4)] in accordance with the  
464 regulations adopted under subsection (b) of this section; (D) the device  
465 used for such test was checked for accuracy [at the beginning of each  
466 workday and no later than the end of each workday by a person  
467 certified by the Department of Public Health; (5)] in accordance with  
468 the regulations adopted under subsection (b) of this section; (E) an  
469 additional chemical test of the same type was performed [and the  
470 device was checked for accuracy by a person certified or recertified by  
471 the Department of Public Health,] at least thirty minutes after the  
472 initial test was performed or, if requested by the peace officer for  
473 reasonable cause, an additional chemical test of a different type was  
474 performed to detect the presence of a drug or drugs other than or in  
475 addition to alcohol, provided the results of the initial test shall not be  
476 inadmissible under this subsection if reasonable efforts were made to  
477 have such additional test performed in accordance with the conditions  
478 set forth in this subsection and such additional test was not performed  
479 or was not performed within a reasonable time, or the results of such  
480 additional test are not admissible for failure to meet a condition set  
481 forth in this subsection; and [(6)] (F) evidence is presented [which  
482 demonstrates that the test results and the analysis thereof accurately

483 reflect] that the test was commenced within two hours of operation of  
484 the vessel. In any prosecution under this section it shall be a rebuttable  
485 presumption that the results of such chemical analysis establish the  
486 ratio of alcohol in the blood of the defendant at the time of the alleged  
487 offense, except that if the results of the additional test indicate that the  
488 ratio of alcohol in the blood of such defendant is twelve-hundredths of  
489 one per cent or less of alcohol, by weight, and is higher than the results  
490 of the first test, evidence shall be presented that demonstrates that the  
491 test results and the analysis thereof accurately indicate the blood  
492 alcohol content at the time of the alleged offense.

493 (b) The Commissioner of Public [Health] Safety shall ascertain the  
494 reliability of each method and type of device offered for chemical  
495 testing and analysis purposes of blood, of breath and of urine and  
496 certify those methods and types which [he] said commissioner finds  
497 suitable for use in testing and analysis of blood, [testing] breath and  
498 [testing] urine, respectively, in this state. [He] The Commissioner of  
499 Public Safety, after consultation with the Commissioner of Public  
500 Health, shall adopt regulations governing the conduct of chemical  
501 tests, the operation and use of chemical test devices and the training [,  
502 certification and annual recertification of operators of such devices as  
503 he] and certification of operators of such devices and the drawing or  
504 obtaining of blood, breath or urine samples as said commissioner finds  
505 necessary to protect the health and safety of persons who submit to  
506 chemical tests and to insure reasonable accuracy in testing results.  
507 Such regulations shall not require recertification of a peace officer  
508 solely because such officer terminates such officer's employment with  
509 the law enforcement agency for which certification was originally  
510 issued and commences employment with another such agency.

511 (c) If a person is charged with a violation of subsection (d) of section  
512 15-133, as amended by this act, the charge may not be reduced, nolle  
513 or dismissed unless the prosecuting authority states in open court [his]  
514 such prosecutor's reasons for the reduction, nolle or dismissal.

515 (d) In any criminal prosecution for a violation of subsection (d) of



516 section 15-133 or section 15-140l or 15-140n, as amended by this act,  
517 evidence that the defendant refused to submit to a blood, breath or  
518 urine test requested in accordance with section 15-140q, as amended  
519 by this act, shall be admissible provided the requirements of  
520 subsection (a) of said section have been satisfied. If a case involving a  
521 violation of subsection (d) of section 15-133 or section 15-140l or 15-  
522 140n, as amended by this act, is tried to a jury, the court shall instruct  
523 the jury as to any inference that may or may not be drawn from the  
524 defendant's refusal to submit to a blood, breath or urine test.

525 Sec. 7. Section 15-154 of the general statutes is repealed and the  
526 following is substituted in lieu thereof (*Effective October 1, 2002*):

527 (a) Any harbor master, deputy harbor master, conservation officer,  
528 special conservation officer or state police officer and any municipal  
529 police officer, any special police officer appointed under sections 29-18  
530 and 29-19 or members of the volunteer police auxiliary force  
531 established under section 29-22, any town marine officers appointed  
532 under section 15-154a and certified by the commissioner for marine  
533 police duty and any lake patrolman appointed under section 7-151b, as  
534 amended, may enforce the provisions of this chapter and chapter 446k,  
535 provided the provisions of sections 15-133, 15-140l or 15-140n, as  
536 amended by this act, may be enforced by either a state police officer,  
537 municipal police officer, municipal police or town marine officer  
538 appointed under section 15-154a and certified by the commissioner for  
539 marine police duty, or conservation officer, special conservation  
540 officer, any special police officer appointed under sections 29-18 and  
541 29-19 or members of the volunteer auxiliary force established under  
542 section 29-22 and any lake patrolmen appointed under section 7-151b,  
543 as amended. In the enforcement of this chapter, such officer may  
544 arrest, without previous complaint and warrant, any person who fails  
545 to comply with the provisions of this chapter. Failure to appear in  
546 court pursuant to such arrest, unless excused by the court or the state's  
547 attorney or assistant state's attorney, shall constitute sufficient cause  
548 for the suspension by the Commissioner of Motor Vehicles of the boat  
549 registration of the boat involved for not more than thirty days or until

550 the matter is resolved by the court, whichever is sooner.

551 (b) When engaged in the enforcement of this chapter and chapter  
552 446k such authorized law enforcement officer shall have the authority  
553 to stop and board any vessel which is under way or which is moored  
554 on the waters of this state for the purposes of (1) examining decals,  
555 certificates and other documents, (2) inspecting safety equipment and  
556 waste disposal systems, (3) determining if the operation of such vessel  
557 exceeds the noise levels established in subsection (b) of section 15-129,  
558 (4) searching when [he] such law enforcement officer has probable  
559 cause to believe that any provision of any law of this state or any rule  
560 or regulation of the Department of Environmental Protection relating  
561 to boating or water pollution has been violated, (5) determining  
562 compliance with [subsection (d)] sections 15-140l and 15-140n and  
563 subsections (d) and (e) of section 15-133, as amended by this act, when  
564 [he] such authorized law enforcement officer has probable cause to  
565 believe said section or subsection has been violated, and (6) making  
566 arrests. No person operating a vessel shall refuse to stop [his] such  
567 vessel or, if sea conditions make stopping in that area unsafe, refuse to  
568 take [his] such vessel to a designated area after being requested or  
569 signalled to do so by an authorized law enforcement officer unless, in  
570 the opinion of such operator, sea conditions make stopping in that area  
571 unsafe. Any person operating a vessel who refuses to stop or refuses to  
572 take [his] such vessel to the designated area shall have committed an  
573 infraction. Any person, when signalled to stop by an authorized law  
574 enforcement officer in a law enforcement vessel using an audible  
575 signal device or flashing blue lights, who operates [his] such vessel in  
576 disregard of such signal so as to (A) interfere with or endanger the  
577 operation of the law enforcement vessel or any other vessel, (B)  
578 endanger or cause damage to property or person, or (C) increase speed  
579 in an attempt to escape or elude such authorized law enforcement  
580 officer shall be fined not less than one hundred dollars nor more than  
581 five hundred dollars for a first offense and for any subsequent offense  
582 shall be fined not less than five hundred dollars nor more than one  
583 thousand dollars. Proof of the registration number of the vessel shall  
584 be prima facie evidence in any prosecution that the owner was the

585 operator.

586 (c) The Commissioner of Environmental Protection shall publish an  
587 enforcement manual, conduct training and educational sessions, serve  
588 as liaison between the enforcement groups and the Superior Court and  
589 shall be generally responsible for the overall coordination of  
590 enforcement.

591 Sec. 8. Subsection (a) of section 15-140e of the general statutes is  
592 repealed and the following is substituted in lieu thereof (*Effective*  
593 *October 1, 2002*):

594 (a) On and after the following dates, no resident of the state, person  
595 owning real property in the state or person owning a vessel in the state  
596 shall operate on the waters of the state a vessel which is required to be  
597 registered or numbered pursuant to this chapter unless such person  
598 has a valid vessel operator license by the United States Coast Guard or  
599 has obtained a safe boating certificate issued by the Commissioner of  
600 Environmental Protection: For operators who are less than twenty  
601 years of age, June 23, 1993; for operators who are less than twenty-five  
602 years of age, October 1, 1993; for operators who are less than thirty  
603 years of age, October 1, 1994; for operators who are less than thirty-five  
604 years of age, October 1, 1995; for operators who are less than forty  
605 years of age, October 1, 1996; and for all operators forty years of age or  
606 older, October 1, 1997. Notwithstanding the provisions of this section,  
607 the commissioner may issue a certificate to a person who has  
608 successfully completed a course in safe boating operation approved by  
609 the commissioner before the date such person is required to take the  
610 exam under this section. A safe boating certificate [shall be  
611 nonrevocable] may be suspended or revoked, pursuant to section 15-  
612 133, 15-140l or 15-140n, as amended by this act, and shall be valid for  
613 the life of the person to whom it is issued unless otherwise suspended  
614 or revoked.

615 Sec. 9. Section 15-133c of the general statutes is repealed and the  
616 following is substituted in lieu thereof (*Effective October 1, 2002*):

617 (a) On or before January 1, 1991, any person convicted of more than  
618 one violation of section 15-133 or 15-134 within any two-year period  
619 may not operate a motorboat powered by a motor in excess of five  
620 horsepower on the waters of the state for recreational purposes  
621 without first obtaining a boating safety certificate from the  
622 commissioner evidencing successful completion of a course in safe  
623 boat handling approved by the commissioner. The commissioner shall  
624 adopt regulations in accordance with the provisions of chapter 54  
625 establishing requirements for the issuance of boating safety certificates  
626 and the content of safe boat handling courses which shall include but  
627 not be limited to instruction in boat handling and navigation. The  
628 commissioner may designate [as his] an agent for giving such course  
629 and issuing such certificates: The United States Coast Guard Auxiliary,  
630 the United States Power Squadron, or any other person or organization  
631 [he] the commissioner deems qualified to act in such capacity.

632 (b) A certified copy of a conviction for a violation of section 15-133,  
633 as amended by this act, [or] 15-134, 15-140l, as amended by this act, or  
634 15-140n, as amended by this act, shall be sent within thirty days of  
635 conviction to the Commissioner of Environmental Protection without  
636 charge by the clerk of the court wherein such conviction has been had.

637 Sec. 10. Subsection (a) of section 14-227f of the general statutes is  
638 repealed and the following is substituted in lieu thereof (*Effective*  
639 *October 1, 2002*):

640 (a) Any person whose motor vehicle operator's license or  
641 nonresident operating privilege is suspended under subsection (h) of  
642 section 14-227a for a conviction of a second or subsequent violation of  
643 subsection (a) of said section or under section 14-227b for a second or  
644 subsequent time shall participate in a treatment program approved by  
645 the Commissioner of Motor Vehicles. The commissioner shall not  
646 reinstate the operator's license or nonresident operating privilege of  
647 any such person until such person submits evidence to the  
648 commissioner that [he] such person has satisfactorily completed the  
649 treatment program. Any person whose certificate is suspended or

650 revoked pursuant to sections 15-133, 15-140l or 15-140n, as amended  
651 by this act, shall participate in such treatment program.

652 Sec. 11. Subsection (k) of section 14-227a of the general statutes is  
653 repealed and the following is substituted in lieu thereof (*Effective*  
654 *October 1, 2002*):

655 (k) In addition to any fine or sentence imposed pursuant to the  
656 provisions of subsection (h) of this section, the court may order such  
657 person to participate in an alcohol education and treatment program.  
658 The court may order any person whose certificate is suspended or  
659 revoked, pursuant to sections 15-133, 15-140l or 15-140n, as amended  
660 by this act, to participate in such alcohol education and treatment  
661 program.

662 Sec. 12. Subsection (a) of section 54-56g of the general statutes is  
663 repealed and the following is substituted in lieu thereof (*Effective*  
664 *October 1, 2002*):

665 (a) There shall be a pretrial alcohol education system for persons  
666 charged with a violation of section 14-227a and the provisions of  
667 sections 15-133, 15-140l and 15-140n, as amended by this act. Upon  
668 application by any such person for participation in such system and  
669 payment to the court of an application fee of fifty dollars, the court  
670 shall, but only as to the public, order the court file sealed, provided  
671 such person states under oath, in open court or before any person  
672 designated by the clerk and duly authorized to administer oaths,  
673 under penalties of perjury that such person has never had such system  
674 invoked in such person's behalf and that such person has not been  
675 convicted of a violation of section 53a-56b or 53a-60d, a violation of  
676 subsection (a) of section 14-227a before or after October 1, 1981, or a  
677 violation of subdivision (1) or (2) of subsection (a) of section 14-227a on  
678 or after October 1, 1985, and that such person has not been convicted in  
679 any other state at any time of an offense the essential elements of  
680 which are substantially the same as section 53a-56b or 53a-60d or  
681 subdivision (1) or (2) of subsection (a) of section 14-227a. Unless good  
682 cause is shown, a person shall be ineligible for participation in such

683 pretrial alcohol education system if such person's alleged violation of  
 684 section 14-227a caused the serious physical injury, as defined in section  
 685 53a-3, of another person. The fee imposed by this subsection shall be  
 686 credited to the Criminal Injuries Compensation Fund established by  
 687 section 54-215.

688 Sec. 13. Section 15-140j of the general statutes is amended by adding  
 689 subsection (h) as follows (*Effective October 1, 2002*):

690 (NEW) (h) A certificate of personal watercraft operation may be  
 691 suspended or revoked in accordance with the provisions of this act.

692 Sec. 14. (NEW) (*Effective October 1, 2002*) Any vessel engaged in  
 693 towing upon the waters of the state shall have a minimum of two  
 694 persons aboard such vessel, one of whom shall act as a spotter for such  
 695 towing operation. Any towline measuring twenty-five feet or more in  
 696 length shall have attached to such line fluorescent orange flags, spaced  
 697 one at each five-foot increment of such line.

This act shall take effect as follows:	
Section 1	<i>October 1, 2002</i>
Sec. 2	<i>October 1, 2002</i>
Sec. 3	<i>October 1, 2002</i>
Sec. 4	<i>October 1, 2002</i>
Sec. 5	<i>October 1, 2002</i>
Sec. 6	<i>October 1, 2002</i>
Sec. 7	<i>October 1, 2002</i>
Sec. 8	<i>October 1, 2002</i>
Sec. 9	<i>October 1, 2002</i>
Sec. 10	<i>October 1, 2002</i>
Sec. 11	<i>October 1, 2002</i>
Sec. 12	<i>October 1, 2002</i>
Sec. 13	<i>October 1, 2002</i>
Sec. 14	<i>October 1, 2002</i>

**Statement of Legislative Commissioners:**

Throughout the bill references to "operating privilege" were changed to "safe boating certificate or certificate of personal watercraft operation" for consistency with the general statutes.

<b>ENV</b>	<i>Joint Favorable Subst. C/R</i>	JUD
<b>JUD</b>	<i>Joint Favorable Subst.-LCO</i>	

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

### **OFA Fiscal Note**

#### **State Impact:**

<b>Fund-Type</b>	<b>Agency Affected</b>	<b>FY 03 \$</b>	<b>FY 04 \$</b>
Various - Cost	Department of Environmental Protection	Minimal	Minimal
GF-Cost/Revenue	Various Criminal Justice Agencies; Departments of Public Health and Public Safety	Potential	Potential
Pre-Trial Account	Department of Mental Health and Addiction Services	None	None

#### **Municipal Impact:**

<b>Effect</b>	<b>Municipalities</b>
Minimal	Various

#### **Explanation**

It is anticipated that enforcement of violations for operating a vessel or waterskiing while under the influence of alcohol or drugs and related crimes will be handled by the existing Department of Environmental Protection (DEP) and other state and municipal law enforcement personnel. The bill will affect the procedures that are utilized and change the penalties, but is not anticipated to impact the numbers of boaters that are stopped. Any increase in workload to the DEP due to potential hearings under the administrative procedure for suspending a person's safe boating certificate is anticipated to be minimal.

Adoption of regulations by the DEP is anticipated to minimally increase their workload and divert staff away from current duties. It is anticipated that the DEP will use the Department of Motor Vehicles (DMV) regulations as a model (since provisions in the bill parallel



DMV's), which will reduce the work associated with the regulation.

There were almost 450 drunken and reckless boating offenses under the bill's statutes in FY 01 according to court statistics. The state collected approximately \$23,000 from fines during that time. The bill establishes the possibility of probation and incarceration for various offenses in the bill and increases the amount of potential incarceration in other cases. It is unknown to what extent the bill's provisions will be implemented in the future. However, these provisions will likely result in additional costs to the criminal justice system, primarily for probation, alternative programs and for incarceration. Potential revenue from increased fines could exceed \$100,000.

Of the 450 drunken and reckless boating offenses in FY 01, only 5% resulted in convictions.<sup>1</sup> The balance of the offenses resulted in infractions or dismissals. To the extent that the number of offenders committed to the custody of the Department of Correction (DOC) increases, there would be potential costs to the state. Any such increase is indeterminate at this time. The table below describes DOC cost for incarceration of offenders as described in the bill.

<b>Offense</b>	<b>Potential Prison Costs (per offender)</b>
1 <sup>st</sup> – 6 months	\$13,000
2 <sup>nd</sup> – 2 years	\$52,000
3 <sup>rd</sup> – 3 years	\$78,000

It is anticipated that other penalties in the bill, such as those imposed for false statements, would result in a minimal impact.

The bill also allows those charged for the first time of an elevated blood alcohol content while boating to participate in the Pretrial Alcohol Education System program. This program provides alcohol education counseling to certain individuals charged with drunk

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<sup>1</sup> Under the proposed bill, approximately 20 individuals would be potentially subject to incarceration.

driving, and is supported by participant fees. These additional clients will result in additional program expenses as well as offsetting revenue from fees for the restricted, non-General Fund Pretrial Account, operated by the Department of Mental Health and Addiction Services. Therefore, there is no net fiscal impact from the potential increased caseload.

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**OLR Bill Analysis**

sSB 427

**AN ACT CONCERNING BOATING SAFETY****SUMMARY:**

This bill makes the laws governing boating while under the influence of alcohol or drugs parallel in some ways to those governing driving while under the influence, thereby substantially increasing the penalties that apply under the boating laws.

Under the bill, a boater is considered to have implicitly consented to tests to determine his blood alcohol content (BAC). It requires an officer who arrests a person for boating while under the influence or related crimes to revoke temporarily that person's authority to engage in boating if he (1) refuses to submit to the test or (2) has an "elevated" BAC. Under the bill, an elevated BAC is (1) .02% if the person is under 21, (2) .07% if the person has previously been convicted of boating under the influence or boating with an elevated BAC, and (3) .10% for anyone else. Under current law, the criminal penalties for boating while under the influence apply to any boater with a BAC of .10% or more.

The bill establishes an administrative procedure for suspending the person's safe boating certificate or certificate of personal watercraft operation (hereafter "certificate"), which are required for legal boating, and permits suspension or revocation for both types of certificates depending on the offense. The procedure, which parallels the administrative *per se* law for drunk driving, applies if the boater fails to submit to a test or has test results that indicated he was under the influence. This procedure is independent of criminal prosecutions for boating while under the influence. The bill establishes a separate administrative suspension procedure if the boater was injured in an accident and arrested for operating under the influence and reckless boating.

The bill increases the criminal penalties for boating under the influence and applies them to boating with an elevated BAC. Under current law, the penalty is a fine of \$100 to \$500, regardless of the number of

previous offenses. Under the bill, the penalty depends on the number of prior offenses. For a first offense, it imposes a prison term or probation with community service. For subsequent offenses, it imposes a prison term, probation, and community service. The bill also requires suspension of the person's safe boating certificate or certificate of personal watercraft operation for a first or second offense and revocation for a third offense. Under current law, a boating safety certificate is not revocable. The bill makes engaging in activity contrary to the Department of Environmental Protection (DEP) boating regulations subject to both a fine and the penalty for infractions (see COMMENT).

The bill expands the definition of reckless boating under the influence and increases the penalty for this crime.

It modifies the standards under which test results are admissible in criminal proceedings for boating under the influence, including allowing of retesting standards to test for drugs other than or in addition to alcohol.

The bill allows the court to order anyone whose certificate is suspended or revoked to participate in an alcohol education and treatment program and simultaneously requires all offenders to participate.

It broadens the powers of law enforcement officers to stop and seize boats in connection with violations of boating laws. But it allows the operator of a vessel being pursued by an authorized law enforcement officer not to stop if sea conditions, in the operator's opinion, make stopping unsafe. It requires courts to keep certain records regarding violations of boating laws. It increases fines for several boating laws.

The bill also requires any vessel engaged in towing to have two people on board, one of whom must act as a spotter for the towing operation. Any towline 25-feet in length or longer must have orange flags attached to it at five-foot intervals.

EFFECTIVE DATE: October 1, 2002

## **IMPLIED CONSENT**

Under the bill, anyone who operates a boat or water skis in the state is considered to have consented to a chemical test of his blood, breath, or urine. If the person is a minor, his parents or guardians are also considered to have given their consent. An implied consent provision currently exists for driving but not boating.

Under current law, if a person is arrested for (1) operating a boat while under the influence or (2) carrying a loaded firearm while under the influence or with a BAC of .10% or more, the arresting officer must ask him to submit to an alcohol test. The bill appears to limit the officers who can arrest people for these offenses to state and local police, conservation officers, and certain special police (see COMMENT).

The bill also extends the testing provision to people arrested for: (1) water skiing while under the influence, and (2) boating or water skiing with an elevated BAC. The bill extends the following existing requirements to arrests for these crimes: (1) the officer must inform the person of his constitutional rights and that refusing to submit to the test may be used against him in a criminal prosecution; (2) the person must be given an opportunity to telephone an attorney before taking the test; (3) if he agrees to testing, but cannot or will not submit to a blood test, the officer chooses between a urine or breath test; and (4) if he refuses to submit to any test, no test is given.

For these arrests and those for operating under the influence, the bill requires the officer to inform the person that his personal watercraft operation or safe boating certificate will be suspended if he refuses to take the test or if the test indicates that he had an elevated BAC. The officer must note that he has complied with this requirement on the police department record.

## **TEMPORARY REVOCATION**

Under the bill, the officer must immediately revoke the arrested person's operating privilege if he (1) refuses to take an alcohol test or (2) the results of a test taken within two hours of his arrest indicate an elevated BAC. The revocation, which is made on behalf of the DEP commissioner, is for 24 hours. The bill repeals the current law that bans a person who is arrested for boating or water skiing under the influence from engaging in either activity for 24 hours after the arrest.

Under the bill, the officer must issue the person a temporary operating privilege, which is valid for 35 days after the 24-hour revocation period ends. He must submit a sworn report of the incident on a DEP-approved form. The report must describe the officer's reasons for believing there was probable cause to arrest the person for boating or water skiing (1) while under the influence or (2) with an elevated BAC. The report must state whether the person refused to submit to the test or took a test that began within two hours and showed he had an elevated BAC at the time of the alleged offense. The officer must sign the form under penalty of false statement. If the person refused to take the test, a third party who witnessed the refusal must also sign the report.

The officer must mail the following documents to the commissioner within three business days: the report, a copy of the temporary operating privilege, any certificate the officer took into his possession, and the results of any tests or analyses. If the arrested person takes a blood or urine test that requires laboratory analysis, the officer must notify the commissioner and submit the report immediately upon receiving results indicating the person's BAC was elevated.

## **ADMINISTRATIVE SUSPENSION**

The bill establishes an administrative procedure to suspend the person's operating privilege or boating certificate. (The parallel provision in motor vehicle law is called administrative *per se*.) This suspension is independent of any criminal penalties that may apply.

### ***Notice***

Upon receiving the officer's report, the commissioner must suspend the person's boating certificate. The suspension must take place no more than 35 days after the person was arrested. The commissioner must send a notice informing the person of the suspension, when it takes effect, and that he is entitled to a hearing. The notice must inform him that he can schedule the hearing by contacting DEP within seven days after the notice is mailed. If he does not contact DEP during this period, the commissioner must affirm the suspension.

### ***Hearing***

If the person contacts DEP, it must set a date, time, and place for the hearing (the date must be before the suspension takes effect). If the person or hearing officer requests a continuance and shows good cause, the commissioner can grant one for up to 30 days and must extend the temporary operating privilege for a period no longer than the continuance.

Under the bill, the hearing is limited to the following five questions:

1. Did the officer have probable cause to arrest the person for boating or water skiing (a) while under the influence or (b) with an elevated BAC?
2. Was the person arrested?
3. Did he refuse to submit to the test, or did the results of a test begun within two hours indicate that he had an elevated BAC when the alleged offense occurred?
4. Was he operating the boat or engaged in water skiing?
5. Was the blood sample obtained in accordance with conditions for admissibility standards for criminal prosecutions of boating while under the influence cases?

At the hearing, the test results are generally sufficient to indicate the person's BAC when he was boating or water skiing. But evidence must be submitted that these test results accurately reflect the person's BAC at that time if the second test required by the admissibility standards (described below) (1) indicates a BAC of .12% or less and (2) is higher than the first result.

The fees for witnesses summoned to appear at the hearing are the same as those for criminal and civil cases.

### ***Suspension***

Under the bill, a negative answer to any of these five questions requires the commissioner to restore the person's boating certificate. If all questions result in affirmative findings, or if the person did not appear at the hearing, he must affirm the suspension.

The commissioner must send the person notice of his decision within 35 days of the arrest (65 days if a continuance was granted). The notice must be sent by certified mail. If there was no continuance and the

commissioner does not make his decision within the 35-day period, he must reinstate the certificate or operating privilege.

The commissioner must revoke the person's temporary operating privilege and suspend the certificates allowing operating privilege if (1) the person fails to request a hearing, (2) fails to appear at a scheduled hearing, or (3) appears but loses. Table 1 describes the suspension periods, which begin on the date the commissioner makes the decision or the date specified in the suspension notice, whichever is later.

**Table 1: Administrative License Suspension Periods**

	<i>First Offense</i>	<i>Second Offense</i>	<i>Third or Subsequent Offense</i>
<b>Test Refused</b>	6 months	1 year	3 years
<b>BAC of .16% or more</b>	120 days	10 months	2 years, 6 months
<b>Other elevated BAC</b>	90 days	9 months	2 years

The penalties also apply to someone who takes the initial test but refuses to take the second test. They are in addition to any suspension penalties imposed by the criminal court.

These provisions do not apply to someone whose condition makes such tests medically inadvisable. DEP may adopt regulations to implement these provisions.

### ***Special Provisions for Injury Accidents***

Somewhat different provisions apply if the officer obtains test results from a boater (but not a skier) who was in an accident where he suffered or alleges to have suffered an injury. In such cases, the officer must notify the commissioner if (1) the test results indicate that the boater had an elevated BAC and (2) the boater was arrested for (a) boating under the influence or with an elevated BAC and (b) both first and second degree reckless boating under the influence in connection with the accident.

The commissioner must provide the boater notice and an opportunity for a hearing before suspending his operating privilege. It appears that the timeline described above for holding the hearing does not apply in



these cases, but the bill specifies the hearing must be conducted in accordance with Uniform Administrative Procedure Act. This law requires the hearing notice to list the time, place, and nature of hearing, but does not specify a timeline for hearings.

The bill modifies one of the five questions the hearing must address. As noted above, one of the questions the bill requires to be addressed at the hearing is whether the boater (1) refused to submit to the test or (2) took a test that indicated an elevated BAC at the time of the offense. Under the bill, the first part of this question does not apply in the injury accident cases (presumably because the police obtained a blood sample from another source such as a hospital). If any of the five conditions are not met, the commissioner cannot suspend the boater's operating privilege.

In such accident cases, the penalty for a first offense is suspension for up to 90 days and for a subsequent offense, up to one year.

## **CRIMINAL PROSECUTIONS**

### ***Threshold***

The law prohibits operating a boat while under the influence of alcohol or any drug. Under current law, a boater is considered under the influence of alcohol if his BAC is .10% or more. The bill eliminates this definition, thereby allowing a boater to be convicted if he is found to have operated a boat while under the influence of alcohol or drugs, independent of his BAC. But the bill provides that, in any prosecution under this provision, otherwise admissible evidence regarding the BAC of the boater's blood or urine, shown by a chemical analysis of his blood, urine, or breath, is only admissible at his request. The bill specifies that "operate" in this and relevant sections means that the vessel is underway or run aground and not moored, anchored, or docked.

The bill additionally prohibits boating or water skiing with an elevated BAC (.02% if the person is under 21, .07% if he has previously been convicted of boating or water skiing under the influence, and .10% for anyone else).

### ***Evidence Admissibility Standards***

Current law specifies the circumstances under which test results are admissible in criminal prosecutions of boating while under the influence, reckless boating, and carrying a loaded firearm while under the influence. Among other things, the law specifies who can perform a test and how the testing device must be checked for accuracy. It requires there be two tests of the same type (breath, blood, or urine). The law currently requires the Department of Public Health (DPH) commissioner to determine the reliability of each testing device and method. It requires him to adopt regulations for conducting tests, using testing devices, training device operators, and their certification and annual recertification.

The bill eliminates requirements that:

1. the tests be conducted by DPH-certified personnel and that blood tests be conducted by a doctor, registered nurse, laboratory technician, or emergency medical technician II and
2. the device be checked for accuracy at the start and end of each workday and after each initial test by a DPH-certified person.

Instead, it requires that the tests be conducted and the devices checked in accordance with Department of Public Safety (DPS) regulations, eliminating the DPH regulations. It requires the DPS commissioner to consult with the DPH commissioner in developing the regulations. It eliminates the requirement that the regulations require annual recertification of device operators. It bars the regulations from requiring recertification of a peace officer just because he leaves one department and starts work for another. It requires the regulations to cover the drawing or obtaining of blood, breath, and urine samples as the DPS commissioner finds necessary to protect the health and safety of arrested persons and to insure accuracy in testing. It requires the commissioner to determine the reliability of analytic, as well as testing, devices and methods.

The bill requires evidence be presented that the test began within two hours of the operation of the boat (even in firearms cases). It establishes a rebuttable presumption that the test results establish the person's BAC at the time of the of the alleged offense. But evidence must be submitted demonstrating this relationship if the person's second test result (1) indicates a BAC of .12 % or less and (2) is higher than the results of his first test. By law, a second test must be performed at least 30 minutes after the initial test. The bill also permits

a peace officer with reasonable cause to request an additional chemical test (different from the type used to detect alcohol) to detect the presence of a drug or drugs other than or in addition to alcohol.

By law, evidence that a defendant in a boating or skiing under the influence incident refused to submit to an alcohol test is admissible, and the court must instruct a jury concerning what inferences may or may not be drawn from the refusal. The bill extends these provisions to reckless boating under the influence prosecutions.

### ***Penalties***

Under current law, a person operating a boat or water skiing under the influence is subject to a fine of \$100 to \$500. The bill increases the fine, requires imprisonment or community service, and requires the suspension of the boater's certificate for a first offense. It establishes enhanced penalties for second and subsequent offenses within 10 years of a prior conviction. All the prescribed penalties must be assessed. The new penalties are described in Table 2.

**Table 2: Bill's Penalties for Operating a Boat While Under the Influence**

<i>Offense (must be the same offense)</i>	<i>Fine</i>	<i>Prison/ Community Service (CS)</i>	<i>Suspension</i>
<b>First</b>	\$500-\$1,000	Up to six months, 48 consecutive hours non-suspendable OR probation and 100 hours CS	One year
<b>Second</b>	\$1,000-\$4,000	Two years, 120 consecutive days non-suspendable AND probation and 100 hours CS	Three years, or until he turns age 21, whichever is longer
<b>Third or subsequent</b>	\$2,000-\$8,000	Three years, one year non-	Permanent revocation

		suspendable AND probation and 100 hours CS	
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The suspension for a boater who is under 18 is for the period specified above, or until he turns 18, whichever is longer. (Thus, the certificate of a 17-year-old convicted of a second offense will remain suspended until he turns age 21).

A suspension goes into effect when the period for taking an appeal of the conviction ends. The suspension is stayed during an appeal. Within two business days of a suspension taking effect, the defendant must mail or deliver his safe boating or personal watercraft operation certificate. These provisions do not appear to apply to revocations.

The bill, similar to current driving under the influence law, allows the court to require anyone whose certificate was suspended or revoked for boating or reckless boating under the influence to attend an alcohol education and treatment program. But unlike the driving under the influence law, which requires participation only for second or subsequent offenders as a condition of license reinstatement, the bill requires anyone whose certificate is suspended for boating or reckless boating under the influence to attend such a program and does not link participation to certificate reinstatement.

The bill further parallels driving under the influence laws by allowing first time offenders to attend a pretrial alcohol education and prevention program (given that no one was seriously injured or killed, unless good reason is shown). The pretrial option allows offender's to have their record closed to the public after swearing under oath that this was the first offense and paying a \$50 fee.

## RECKLESS BOATING

The bill broadens the scope and increases the penalty for reckless boating under the influence. Under current law, a person is guilty of this crime in the first degree if he (1) operates a boat while under the influence (i.e. has a BAC of .10% or higher) and (2) kills or seriously injures someone or causes more than \$1,000 in property damage. The bill eliminates the specific BAC standard for operating under the influence. It extends the law to cover cases in which the boater has an

elevated BAC (.10%, .07%, or .02%, depending on the circumstances). It also raises the property damage threshold to \$5,000. Under current law, the penalty for this crime is a fine of \$500 to \$1,000, imprisonment for up to one year or both. The bill increases the fine to \$2,500 to \$5,000 while maintaining the prison term.

Under current law, the crime of reckless operation in the second degree applies to people who operate boats while under the influence (.10% BAC) in a way that endangers another person's life, limb, or property. The bill extends this provision to people boating with an elevated BAC. Under current law, the penalty is a fine of \$250 to \$500, imprisonment for up to six months, or both. The bill increases the fine to \$500 to \$1,000 while maintaining the prison term.

Under current law, a boat that was operated by a person arrested for second degree reckless boating under the influence must be impounded for 24 hours after the arrest. The bill allows boats to be impounded for 48 hours or more. It extends this provision to any boat whose operator was arrested for first degree reckless boating under the influence after being involved in a boating accident.

## **POWERS OF LAW ENFORCEMENT OFFICERS**

By law, a wide variety of officers can stop and board any boat that is moored or underway to determine compliance with boating laws. They include harbormasters, conservation officers, special police officers, voluntary auxiliary force members, municipal police, and state and local police officers. The bill extends this power to include determining compliance with the laws that bar reckless boating or skiing under the influence (although these officers appear to have this power under existing law), but it excludes harbor masters and deputy harbor masters from this extension. (The bill also refers to compliance with CGS § 15-133(e), but this provision only governs admissibility of evidence in certain boating under the influence cases.)

Under current law, anyone who fails to stop commits an infraction and anyone who engages in behavior such as trying to escape is subject to a fine of \$100 to \$500 for a first offense and \$500 to \$1,000 for a subsequent offense. But the bill allows the operator of a vessel being pursued by an authorized law enforcement officer not to stop if sea conditions, in the operator's opinion, make stopping in that area unsafe.

For reckless boating in the second degree, the bill allows an officer authorized to enforce the boating laws to take the arrested person's boat. This is a separate offense from reckless boating under the influence in the second degree and covers such things as operating a boat beyond its carrying capacity. The bill extends to such boats provisions that apply to boats taken pursuant to arrests for other boating laws. Among other things, the provisions (1) make the charges incurred by the officer and the marina where the boat is stored a lien on the boat and (2) allow the marina owner to sell the boat if it is not claimed within 60 days

The bill allows any boat that was involved in an accident resulting in death, serious injury, a missing person, or property damage greater than \$5,000 to be seized for the collection of evidence. It allows such boats to be held until the accident investigation or court proceedings are over. It also allows the trailer used to transport the boat to be impounded to facilitate the boat's transportation and handling.

### ***Record-Keeping***

The bill requires the courts to keep a record of boating law violations. The court must send a summary of each case record to the DEP commissioner within five days of a conviction, forfeiture, *nolle*, or other disposition. The summary must include the operator's safe boating certificate or certificate of personal watercraft operation number. Under current law, the court must notify DEP within 30 days only of boating under the influence convictions. The bill requires notice of first and second degree reckless boating under the influence. The DEP commissioner must suspend the certificate for the applicable period specified in the bill.

### **COMMENT**

#### ***Disobeying Regulations***

Under current law, which the bill does not change, operating a vessel or engaging in an activity contrary to the regulations is an infraction, which is punishable by a fine usually set by Superior Court Judges, of between \$35 and \$90, plus an additional fee and a \$20 surcharge. The bill also subjects such activity to a fine of between \$100 and \$500.

### ***Officers Authorized to Enforce Drunken Boating Laws***

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Current law authorizes a wide variety of officers to stop and board any boat that is moored or underway to determine compliance with all boating laws. These include state and local police, harbor masters, conservation officers, special police officers, volunteer auxiliary force members, and lake patrol officers (CGS § 15-154). The bill (§ 7) specifies that these officers (except for harbor masters and deputy harbor masters) can enforce the laws on safe boat operation (which include boating under the influence) and reckless boating under the influence.

But the bill apparently further specifies that only “peace” officers authorized to enforce certain boating laws (including boating and reckless boating under the influence) can enforce the *per se* law, such as arrest offenders; administer blood, urine, or breath tests; temporarily revoke certificates; and seize vessels (§§ 4 & 5). “Peace officers” is a statutorily defined term (CGS § 53a-3). The only peace officers authorized to enforce boating laws are state and municipal police, conservation or special conservation officers, and special police officers for state property and utility or transportation companies appointed by the public safety commissioner.

## **COMMITTEE ACTION**

### Environment Committee

Joint Favorable Substitute Change of Reference

Yea 27      Nay 0

### Judiciary Committee

Joint Favorable Report

Yea 40      Nay 0